IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.A.No.611 DBA of 1995
Date of decision:07.05.2007

State of Haryana

…..Appellant

v.

Ramde and others

…..Respondents

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE S.N.AGGARWAL

Present: Mr. Deepak Girotra, AAG, Haryana, for the appellant.

Ms. Promila Nain, Advocate for the respondents.

JUDGMENT:

The State has preferred this appeal against acquittal of the respondents of the offence under sections 302/34 IPC.

Case of the prosecution is that PW4 Balraj, brother of deceased Shakuntala made a statement before PW7 ASI Satpal on 2.3.1994 at 3.45 PM, on the basis of which FIR was registered, to the effect that his sister Shakuntala was married to Ram Kishan about nine years back. About four months back, her husband died. He was working in Haryana Sheet Glass Limited. She was to get around Rs.40,000/- towards Provident Fund etc. The accused wanted to grab the amount on account of which there was a dispute. On 1.3.1994, he went to the house of her sister at Village Sewli on learning about the dispute. He tried to reconcile the

dispute but could not succeed. The deceased slept in the 'chaubara' (upper-storey) and the witness slept on the ground floor. At midnight, he heard the cries of the deceased. He climbed the staircase and saw the accused coming downwards. He found the deceased on the verge of death and she disclosed that the accused had throttled her. Immediately thereafter, she died. He raised alarm. He then went to his village and narrated the incident to his family members who accompanied him to the village. He then proceeded to lodge the FIR and met PW7 ASI Satpal who recorded his statement. ASI Satpal PW7 went to the place of occurrence, conducted inquest proceedings, prepared rough site plan and sent the dead body for post-mortem examination. After investigation, he challaned the accused.

Dr. R.R.Mittal PW1 conducted post-mortem examination on 3.3.1994 at 10 AM and according to him, the cause of death was due to asphyxia as a result of throttling which was ante-mortem in nature and sufficient to cause death in the ordinary course of nature.

The prosecution examined Dr. RR Mittal as PW1, Ram Kumar, Draftsman as PW2, Constable Ramesh Chand as PW3, Balraj as PW4, Om Parkash as PW5, ASI Satbir Singh as PW6 and ASI Satpal as PW7.

The accused denied the prosecution allegations and

stated that they were not interested in the Provident Fund dues of Ram Kishan which stood deposited in the names of the children of the deceased already. On finding the deceased dead, they called PW4 Balraj in the morning.

After considering the evidence on record, the trial court held that the case of the prosecution was not proved beyond reasonable doubt and acquitted the respondents.

The trial court, inter-alia, gave following reasons:-

(i)PW4 Balraj was a chance witness and his presence at the time of occurrence was belied by circumstances.

(ii)Version of Balraj PW4 suffered from inherent infirmities.

(iii) There was unexplained delay in lodging of the FIR, which belied the presence of the witness at the place of occurrence.

(iv)There were improvements in the version given by PW4 Balraj in his statement Ex.PD/1 and before the court. In his earlier statement, he did not mention that he raised alarm on which 5/10 persons came from outside but they were not allowed entry in the house of the accused. He could not give names of the persons who were attracted to the place of occurrence.

We have heard learned counsel for the State and perused the record.

Death of Shakuntala having taken place in the house of the accused raised a natural suspicion about their involvement but in absence of evidence which may clearly indicate involvement of the accused, the view taken by the trial court cannot be held to be perverse. Reasons for not believing PW4 Balraj cannot be held to be without any basis. Even if two views are possible, we are of the view that interference with the order of acquittal is not called for.

Scope of appeal against acquittal has been gone into by the Hon'ble Supreme Court, inter-alia, in ***Jaswant Singh v. State of Haryana,*** AIR 2000 SC 1833, wherein it was observed:-

> "21**.** The principle to be followed by appellate courts considering an appeal against an order of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the order is clearly unreasonable it is a compelling reason for interference (see *Shivaji Sahabrao Bobade* v. *State of Maharashtra,* (1973 2 SCC 793: AIR 1973 SC 2622: (1973 Cri LJ 1783)). The principle was elucidated in *Ramesh Babulal Doshi* v. *State of Gujarat,* (1996) 9 SCC 225: 1996 AIR SCW 2438: AIR 1996 SC 2035 (1996 Cri LJ 2867):
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> > "While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court

holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then and then only reappraise the evidence to arrive at its own conclusions."

In view of above, the appeal is dismissed.

(Adarsh Kumar Goel)
Judge

(S.N.Aggarwal)
May 7, 2007 Judge

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